

REMARKS

By this Amendment, Applicant amends claims 9 and 15 to more appropriately define the present invention and amends claims 2-6 and 8 to improve form. Claims 1-16 remain pending.

Before addressing the rejection, Applicant points out that the Examiner did not acknowledge the claim for priority on form PTO-326. Applicant claimed priority in the application transmittal filed December 27, 2000 and submitted a certified copy of the priority document on December 27, 2000. Thus, Applicant requests that the Examiner acknowledge the claim for priority in the next Office correspondence.

Furthermore, the Examiner considered the Information Disclosure Statement filed August 15, 2002 and returned the corresponding Form PTO-1449 with the appropriate notations. However, the Examiner did not consider the Information Disclosure Statement filed December 27, 2000 and did not return the corresponding Form PTO-1449 with the appropriate notations. Thus, Applicant requests that the Examiner consider the Information Disclosure Statement filed December 27, 2000 and return the corresponding Form PTO-1449 with the appropriate notations with the next Office correspondence.

In the Office Action ("OA"), the Examiner indicated that claims 7, 8, 13, and 14 are allowed and objected to claims 2-6, 10, 12, and 16 as being dependent upon a rejected base claim but indicated that they would be allowable if rewritten in independent form. Applicant thanks the Examiner for indicating allowable subject matter. With regard to the objected claims, Applicant submits that these claims are allowable at least due to their dependence from their allowable base claims for the reasons advanced below.

Additionally, the Examiner rejected claims 1 and 11 under 35 U.S.C. § 102(e) as anticipated by Retzer et al., U.S. Patent No. 6,009,325 ("Retzer") and rejected claims 9 and 15

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under 35 U.S.C. § 103(a) as unpatentable over Osawa, U.S. Patent No. 5,621,732 ("*Osawa*") in view of Katsuki, U.S. Patent No. 6,366,792 ("*Katsuki*"). Applicant addresses these rejections below.

I. Response to Rejection Under 35 U.S.C. § 102(e)

The Examiner rejected claims 1 and 11 under section 102(e) as anticipated by *Retzer*. In response, Applicant submits that *Retzer* fails to anticipate claims 1 and 11 because *Retzer* fails to teach all the elements of claims 1 and 11.

In order to properly anticipate Applicant's claimed invention under 35 U.S.C. § 102(e), each and every element of the claim in issue must be found, either expressly described or under principles of inherency, in a single prior art reference. Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." M.P.E.P. § 2131, ed. 8, rev. 1 (Feb. 2003) (quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236 (Fed. Cir. 1989)). Finally, "[t]he elements must be arranged as required by the claim." M.P.E.P. § 2131 at 2100-70.

Claim 1 is directed to a communication apparatus in which a communication channel and a control channel are exclusively assigned to a radio communication resource to be used comprising a combination of elements including, *inter alia*, "means for executing a control procedure required for establishment of a radio link using the control channel; means for monitoring a traffic of the communication channel; and means for dynamically controlling an execution timing or execution time interval of the control procedure on the basis of the traffic detected by said monitoring means."

Claim 11 is directed to a control method for a communication apparatus in which a communication channel and a control channel are exclusively assigned to a radio communication resource to be used comprising a combination of elements including, *inter alia*, "executing data

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transmission/reception using the communication channel and executing a control procedure required for establishment of a radio link using the control channel; monitoring a traffic of the communication channel; and dynamically controlling an execution timing or execution time interval of the control procedure on the basis of the traffic detected in said monitoring step.”

Retzer discloses a method and apparatus that automatically switches between a voice mode and a data mode in a wireless communication device (e.g., a cellular telephone). *Retzer*, Abstract. *Retzer* discloses that the apparatus switches between a data link connection and a voice link depending on traffic on each link. Specifically, the apparatus monitors the data link for a predetermined period of time and, if traffic is detected, the data is processed. *Retzer*, Fig. 5. Then, after the predetermined period of time expires, the apparatus monitors the voice link for a second time period. *Retzer*, Fig. 5.

However, *Retzer* fails to disclose at least “means for dynamically controlling an execution timing or execution time interval of the control procedure on the basis of the traffic detected by said monitoring means,” as recited in claim 1 and “dynamically controlling an execution timing or execution time interval of the control procedure on the basis of the traffic detected in said monitoring step,” as recited in claim 11. *Retzer* merely discloses a step of monitoring data network traffic over communication links (step 506 in FIG. 5), but does not disclose dynamically controlling an execution timing or execution time interval of the control procedure. Although the Examiner pointed out col. 4, lines 26-27, col. 4, lines 50-61 in *Retzer* (OA at 2-3), the cited text merely discloses monitoring a data link and not an execution timing or execution time interval of the control procedure.

Moreover, *Retzer* fails to disclose at least “means for executing a control procedure required for establishment of a radio link using the control channel,” as recited in claim 1, and

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“executing a control procedure required for establishment of a radio link using the control channel,” as recited in claim 11. Although the Examiner pointed out col. 4, lines 21-28, col. 4, lines 37-38 (OA at 2), *Retzer* merely discloses establishment of a data link connection (step 502 “START”), but does not disclose executing a control procedure required for establishment of a new radio link.

Therefore, *Retzer* fails to teach all the elements of claims 1 and 11. Accordingly, *Retzer* does not anticipate claims 1 and 11. For at least this reason, claims 1 and 11 are allowable.

II. Response to Rejection Under 35 U.S.C. § 103(a)

The Examiner rejected claims 9 and 15 under section 103(a) as unpatentable over *Osawa* in view of *Katsuki*. In response, Applicant respectfully submits that a *prima facie* case of obviousness has not been established for claims 9 and 15 because the cited references fail to teach or suggest all the claim elements.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all the claim elements. Furthermore, “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. § 2143.03 (quoting *In re Wilson*, 424 F.2d 1382, 1385 (C.C.P.A. 1970)). Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings. Third, there must be a reasonable expectation of success. M.P.E.P. § 2143 at 2100-122 to 127.

Claim 9 is directed to a communication apparatus capable of being driven by a battery and simultaneously connecting to a plurality of remote terminals comprising a combination of elements including, *inter alia*, “means for detecting a residual capacity of the battery; and means for dynamically controlling an execution timing or executing time interval of [a] transmission

processing of [a] terminal search message or [a] terminal search wait processing on the basis of a detection result of said detection means.”

Claim 15 is directed to control method for a communication apparatus capable of being driven by a battery and simultaneously connecting to a plurality of remote terminals comprising a combination of elements including, *inter alia*, “detecting a residual capacity of the battery; and dynamically controlling an execution timing or execution time interval of transmission processing of a terminal search message for searching for a remote terminal or terminal search wait processing for detecting a terminal search message for searching for a remote terminal and responding thereto on the basis of a detection result in said detecting step.”

Osawa discloses a relay station that detects existence of control information transmitted from a first terminal during a preset detection time interval from a time of reception of the control information. *Osawa*, Fig. 5. If the control information has not been detected, the relay station exchanges the control information with the first terminal instead of a second terminal, receives data from the first terminal and transfers the data to the second terminal. *Osawa*, Fig. 5. As admitted by the Examiner (OA at 4), *Osawa* fails to teach or suggest at least dynamically controlling an execution timing or executing time interval of the transmission processing of the terminal search message or the terminal search wait processing on the basis of a detection result of the detection means (residual capacity of the battery). In fact, *Osawa* does not disclose dynamically controlling any time interval, but merely discloses monitoring time interval from a time of reception of control information transmitted from the first terminal. *Osawa*, Fig. 5.

Moreover, *Katsuki* fails to teach or suggest at least “means for dynamically controlling an execution timing or executing time interval of [a] transmission processing of [a] terminal search message or [a] terminal search wait processing on the basis of a detection result of said detection

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means,” as recited in claim 9, and “dynamically controlling an execution timing or execution time interval of transmission processing of a terminal search message for searching for a remote terminal or terminal search wait processing for detecting a terminal search message for searching for a remote terminal and responding thereto on the basis of a detection result in said detecting step,” as recited in claim 15.

Katsuki is directed to a radio portable information terminal 7 which can communicate with an information network center 1 via a base station 6. *Katsuki* discloses that, if radio portable information terminal 7 verifies, from the detected battery capacity level, that data transmission/reception is impossible, the terminal 7 formulates a data transmission/reception disabling signal to route a data transmission/reception impossible signal via the base station 6 to information network center 1. *Katsuki*, Fig. 3. In contrast to claims 9 and 15, *Katsuki* does not disclose dynamically controlling an execution timing or executing time interval on the basis of the residual capacity of the battery.

The Examiner pointed out col. 4, lines 14-58 and asserted that *Katsuki* discloses means for detecting a residual capacity of a battery and wherein controlling of an execution timing or executing time interval is controlled based on the detection result of a residual capacity. (OA at 4.) However, *Katsuki* merely discloses “charging the battery” if the battery capacity level is insufficient, not dynamically controlling an execution timing or executing time interval of the transmission processing.

Therefore, since *Katsuki* fails to cure the deficiencies of *Osawa*, *Osawa* and *Katsuki*, when taken alone or in combination, fail to teach or suggest at least all the elements of claims 9 and 15. Accordingly, a *prima facie* case of obviousness has not been established for these claims. For at least this reason, claims 9 and 15 are allowable.

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III. Conclusion


In view of the foregoing, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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